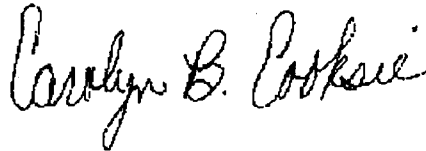


For: FSA Offices

Questions and Answers on Shared Appreciation For 1951-S Servicing

Approved by: Deputy Administrator, Farm Loan Programs



1 Shared Appreciation

A

Background

Procedure Notice 29 dated March 10, 1998, revised FmHA Instruction 1951-S for handling cases involving shared appreciation. Questions were received from State Offices regarding the revisions and how to implement them.

B

Purpose

Exhibit 1 of this notice lists the questions and answers for handling shared appreciation.

Note: A separate notice will be issued concerning appeals and appraisal issues, which explains when the shared appreciation amount can be appealed.

C

Contact

Questions should be addressed as follows:

- State Offices contact LSPMD
 - County Offices contact State Offices.
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Disposal Date

July 1, 1999

Distribution

All FSA Offices; State Offices relay to County Offices

Questions and Answers on Shared Appreciation**SAA Questions and Answers****1: The 24-month review period was removed for Shared Appreciation. Is it still required for Net Recovery Buyouts?**

Answer: Yes. FmHA Instruction 1951-S, section 1951.913(c) still requires the servicing official to review the county real estate records every 24 months, starting from the date of the Net Recovery Buyout Recapture Agreement. For shared appreciation agreements (SAA's), FmHA Instruction 1951-S, section 1951.914(a)(2) only requires a review of the courthouse records 6 months before the expiration of SAA or when another action triggers the agreement.

2: Is the shared appreciation triggered upon death of a borrower with no other co-obligors since the borrower would no longer be farming?

Answer: If there is not a spouse to whom the property will be conveyed, then SAA would be triggered under FmHA Instruction 1951-S, section 1951.914(b)(3) as no longer farming. The shared appreciation should be addressed as a debt owed to FSA in the deceased borrower claim. If an FLP loan is also involved, the account should be serviced according to RD Instruction 1962-A, section 1962.46(f). If time is an issue and the appraisal cannot be completed before the deadline to file a claim, the amount owed to FSA should reflect the maximum amount collectible under SAA, less any amount previously paid. A statement should also be added to indicate that this is the maximum amount that can be collected and that the exact figure will be determined at a later date. If the property is later conveyed to the spouse through the estate, no shared appreciation would be due until the expiration date of SAA or until 1 of the other actions in FmHA Instruction 1951-S, section 1951.914(b) occurs. When the shared appreciation is determined, the executor of the borrower's estate will be notified of the amount due under FmHA Instruction 1951-S, section 1951.914 (d) with appeal rights.

3: Does acceleration trigger SAA's dated before March 10, 1998?

Answer: Yes. According to FmHA Instruction 1951-S, section 1951.914(b)(4), all SAA's are triggered when the notes or assumption agreements are accelerated after March 10, 1998.

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Questions and Answers on Shared Appreciation (Continued)

SAA Questions and Answers (Continued)

4: Since shared appreciation is now triggered with acceleration, how are cases handled that were already accelerated before March 10, 1998? Are existing foreclosure complaints amended?

Answer: In some cases, and upon consent of the local OGC or DOJ, it may be feasible to reaccelerate the account to include SAA. However, it would not be in the Government's best interest to reaccelerate an account that has been in foreclosure for a number of years unless there is equity or other assets from which the shared appreciation can be collected that would substantially offset the agency's costs of delaying foreclosure. In those cases, the shared appreciation would not be triggered until the sale of the property by foreclosure according to FmHA Instruction 1951-S, section 1951.914 (b)(1). Unless prohibited by the foreclosure, a deficiency judgment for the amount of shared appreciation due may be obtained. If collection is not feasible or legally possible, the shared appreciation, along with any other debt, will be settled under FmHA Instruction 1956-B.

5: How is shared appreciation handled in bankruptcy cases?

Answer: If a borrower files bankruptcy, SAA must be included in the agency's proof of claim according to RD Instruction 1962-A, section 1962.47(c) even though the agreement may not be triggered as yet. If the entire agreement was not already triggered, the amount of claim would be the maximum shared appreciation collectible, less any amount previously paid. If the shared appreciation was not mentioned in the proof of claim for prior bankruptcies, or the proof of claim is not amended, then the State Office should consult with its regional OGC to determine if it has a legal right to collect any shared appreciation that may be due from an action that would trigger the agreement at a later date. If the shared appreciation is no longer collectible, the amount will be considered unsecured debt that will be written off after discharge.

6: Does a transfer of title from the borrowers to a trust that is made up of the same individuals, constitute a conveyance triggering recapture?

Answer: If the grantees are the same as the borrowers, then SAA would not be triggered because of the conveyance. However, a copy of the trust agreement and deed must be forwarded to the local OGC for review and concurrence.

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Questions and Answers on Shared Appreciation (Continued)**SAA Questions and Answers (Continued)****7: Repayment of the loans triggers the shared appreciation. What loans?**

Answer: According to FmHA Instruction section 1951.914(b)(2), shared appreciation is triggered on repayment of the loans or when the loans are otherwise satisfied. The loans referred to in this paragraph are **all** loans remaining after writedown, both chattel and real estate secured..

8: Are agreements dated before March 10, 1998 subject to recapture of the total amount of writedown or only the writedown secured by real estate?

Answer: FmHA Instruction 1951-S, section 1951.914 (c)(3) states that the maximum appreciation requested will not be more than the total amount of writedown. Before issuance of PN 29, the maximum amount due could not exceed the amount of writedown that was secured by real estate. If the agreement was signed before March 10, 1998, and reflected only the amount of writedown secured by real estate, then the agency cannot require more than that amount. SAA's signed on or after March 10, 1998, must reflect the total amount of writedown.

9: Does the appraisal date have to be as of the date SAA was triggered?

Answer: No. FmHA Instruction 1951-S, section 1951.914(c)(1) states that the current market value must be determined based on a current appraisal not to exceed 1 year old. If the current appraisal does not reflect the current market value as of the date SAA was triggered, then a new appraisal must be done.

10: Previously, National Office training material allowed for pro-rating the original market value for partial sales. Is this still acceptable or does a new appraisal have to be done on that parcel as of the date of the writedown?

Answer: An appraisal is not always needed to determine the original market value when only a portion of the property is being sold. FmHA Instruction 1951-S, section 1951.914 (c)(1) states that an appraisal **may** have to be done to determine the market value of the property at the time the agreement was signed if such value cannot be obtained through another method. One method is to pro-rate the values using the following process.

| Step | Action |
|------|--|
| 1 | Obtain 2 appraisals to reflect the value as of the date the agreement was triggered; 1 on the entire property and the other on the property being sold |
| 2 | Calculate the percentage of the current value of the acres being sold to the current value of the total acres to get the relative value of the acres being sold. |
| 3 | Apply the percentage determined in step 2 to the original market value of the total acres as of the SAA date to determine the market value of the parcel being sold. |

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Questions and Answers on Shared Appreciation (Continued)

SAA Questions and Answers (Continued)

11: Can the original market value ever be exceeded as a result of partial sales, and how is the original market value of the remaining property determined?

Answer: If the pro-rata method described in item 10 is used to determine the original market value of the partial sale tract, then the original market value will never be exceeded. However, it is possible that the original market value could be different if an appraisal is needed to determine the value of the tract being sold as of the writedown date. The 2 parcels individually could be valued at more, or less, than the property as 1 unit.

If an appraisal is needed to determine the original market value, then only the parcel being sold needs to be appraised. The property remaining will not need an appraisal. The original value of the remaining property will be determined 6 months before the expiration date of SAA according to FmHA Instruction 1951-S, section 1951.914(a)(2), or sooner if 1 of the actions in FmHA Instruction 1951-S, section 1951.914(b) occurs, taking into consideration partial sales.

Note: If the original market value is exceeded, then the Finance Office must be notified to adjust the original market value on the equity account.

12: Is the sale price or appraisal price used to calculate shared appreciation?

Answer: FmHA Instruction 1951-S, section 1951.914(c)(1) states that the current market value of the real estate property will be determined based on a current appraisal. This means that an appraisal will be obtained as a basis for determining the current market value. In cases where the agreement was triggered for other than sale of property, shared appreciation would be based solely on the appraised value. In cases where the property is sold, the greater of the appraisal price or the sale price can be used if the appraisal is revised to reflect the greater value.

13: Can capital improvements made by the borrower during the period of shared appreciation be deducted before calculating shared appreciation?

Answer: No. Section 353 of the Consolidated Farm and Rural Development Act specifically states that SAA's shall provide for recapture based on the difference between the appraised values of the real estate security property at the time of restructuring and at the time of recapture. There are no deductions allowed.

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Questions and Answers on Shared Appreciation (Continued)**SAA Questions and Answers (Continued)****14: When is the borrower notified of shared appreciation due when triggered because of acceleration?**

Answer: According to FmHA 1951-S, section 1951.914(d), the borrower shall be notified by certified mail of any shared appreciation due at the time the acceleration notice is sent. FmHA 1951-S, section 1951.914 (b)(1)(ii) further states that the due date to pay the shared appreciation shall be 30 days from the date of the notification or when the account is accelerated, whichever is later. The borrower should be notified as soon as possible before or at the same time the acceleration notice is sent. The acceleration notice must describe SAA and the maximum amount collectible under the agreement. A statement shall be added to indicate the amount due under SAA as reflected in the shared appreciation notification to the borrower as follows:

"The Shared Appreciation Agreement you signed on _____, in return for FSA writing down a portion of your debt, is now due and payable according to 7 CFR Part 1951, Subpart S, section 1951.914. As previously notified in a letter dated _____, the amount due under this agreement is \$ _____. Should this amount change because of an appeal, the maximum FSA can ever collect towards this agreement is \$ _____".

15: What is meant by an independent appraisal review as outlined in FmHA Instruction 1951-S, section 1951.914(d)(1)(iv)?

Answer: A separate notice is being issued to clarify how appraisals will be handled in the appeal process. In short, the borrower will be provided the opportunity to submit an appraisal, at the borrower's costs, for FSA to review. The borrower must provide the independent appraisal within 30 days from the date of the adverse letter. If the appraiser and appraisal are acceptable and within 5 percent of FSA's appraised value, then the borrower must choose the appraisal to use for the action being taken. If the appraisal is more than 5 percent or the borrower chooses not to provide an independent appraisal, then the borrower can appeal FSA's appraisal to NAD.✱

16: Can a borrower voluntarily pay shared appreciation before the expiration of the agreement?

Answer: The borrower can voluntarily pay back the writedown at any time, which will cancel SAA. However, generally there is no shared appreciation to pay until the agreement is triggered by an action in FmHA 1951-S, section 1951.914(b) or at the end of the agreement.

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Questions and Answers on Shared Appreciation (Continued)

SAA Questions and Answers (Continued)**17: When can shared appreciation amortizations be processed in the Finance Office?**

Answer: Because of the Year 2000 project, this task and many others will be delayed. According to FmHA 1951-S, section 1951.914(e) the 3O transaction is not yet available and therefore the account should be flagged 51-S in the interim. The loan and payments should be tracked manually in MRS or a management system card. The payments must be submitted as a miscellaneous collection to be held in suspense until the amortization can be processed. If a yearend statement is needed, prepare a problem case report with the loan and payment information and send it to the Finance Office to calculate the interest paid for the year.

18: When is the 3V ADPS transaction processed?

Answer: The 3V ADPS transaction should be processed at the time the borrower is notified of shared appreciation due, or at the time it is determined that no appreciation is due. This transaction will establish an equity receivable account for when the funds are collected. If the borrower appeals and the amount is changed, the Finance Office must be notified to make the necessary corrections.

19: How are sale proceeds to be applied to the account?

Answer: According to FmHA Instruction 1951-S, section 1951.914(f), proceeds collected from the sale of secured property are to be applied first to the shared appreciation, and any balance to the loan debt in the order of lien priority.

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Questions and Answers on Shared Appreciation (Continued)

SAA Questions and Answers (Continued)

20: When FSA acquires security property, does the shared appreciation have to be acquired (credited) first?

Answer: Currently, the 3E ADPS transaction will not acquire the equity receivable account because of software limitations. There are 2 ways to handle the acquisition based on the following circumstances.

| IF... | THEN... |
|---|--|
| the acquisition value is not sufficient to cover any part of the shared appreciation after crediting the FLP loans and the borrower is released of liability with the acquisition, or a debt settlement is approved no later than the acquisition date | a 3K transaction can be processed prior to the 3E transaction to first writeoff the equity receivable account that is not being acquired (credited). Then the 3E transaction can be processed on the FLP debt only. |
| there is sufficient equity to cover any part of the shared appreciation after crediting the FLP loans, or the debt has not been approved for debt settlement or release of liability on or before the acquisition date | <p>the equity account has to first be converted to a loan account as follows.</p> <ul style="list-style-type: none"> • Process the 3V ADPS transaction first to establish the amount due under the shared appreciation agreement. The date the shared appreciation was triggered can be no later than the acquisition date. • Process a recoverable cost voucher for the amount of the shared appreciation. • Apply the recoverable cost to the equity receivable account with a credit date no later than the acquisition date. • Process the 3E transaction showing the recoverable cost item to be credited first. The most secured loan must be the loan it was charged to, or the recoverable cost loan number for cases where the recoverable cost is separate from the original loan. |